

REQUEST FOR PROPOSAL

MICHIGAN DEPARTMENT OF TRANSPORTATION (MDOT)

OFFICE OF PASSENGER TRANSPORTATION (OPT)

EMERGENCY MANAGEMENT PLAN TEMPLATE (EMPT) FOR MICHIGAN RURAL PUBLIC TRANSIT AGENCIES

Send Questions To: Jeff Turner, Vehicle Procurement Analyst
Michigan Department of Transportation
Office of Passenger Transportation
MDOT-OPT-RFP@michigan.gov

Submit questions by email on or before AUGUST 27, 2021

Date Issued: AUGUST 12, 2021

Proposals Due: SEPTEMBER 27, 2021 @ NOON (EDT) LOCAL TIME
LATE PROPOSALS WILL NOT BE CONSIDERED

Proposer Name: _____

Proposal Price: \$ _____

Submit To: Jeff Turner, Vehicle Procurement Analyst
Michigan Department of Transportation
Office of Passenger Transportation
TurnerJ3@michigan.gov

PROPOSER READ AND COMPLETE

The undersigned certifies that he/she offers to furnish materials and services in strict accordance with all requirements set forth in this proposal.

SIGNATURE _____ **DATE** _____

DUN OR FEDERAL ID #: _____

This request for proposal does not obligate MDOT to award a contract or complete the project, and MDOT reserves the right to cancel the announcement if it is in its best interest.

1. Project Overview

MDOT OPT is responsible for administering state and federal funding for public transit. Public transit in the state of Michigan involves the conveyance of people from one destination to another on a publicly controlled, shared-use motor vehicle. Michigan public transit spans all 83 Michigan counties and includes 60 rural agencies that provide daily access to education, employment, medical care, shopping, and many other places people need and want to access to live independently.

This project will include assessing and evaluating rural transit planning activities specific to emergency preparedness and emergency response scenarios, working with rural transit systems to define an emergency management plan vision with goals and objectives, identifying current and future trends that will guide/impact emergency responses, completing peer research and comparisons, creating a consistent baseline for reacting in emergency situations through peer research/comparison and trend identification, and producing both a draft and final version of an Emergency Management Plan template (EMPT) for Michigan rural public transit agencies (TAs).

This RFP is intended for assessment of Michigan's rural Section 5311 subrecipient agencies, but the vendor may include a la carte pricing for opportunities to also work with urban agencies, Section 5310, or Specialized Services recipients.

The expected budget for the project is not to exceed \$200,000 (excluding a la carte pricing for individual agencies), which will be contracted in a single contract for a period of twelve to eighteen months but may have multiple phases. One six-month extension may be provided for completion of the scope.

2. Project Goal

The goal of this project is to produce a vulnerability assessment outlining rural transit agencies' current state, risks, areas of exposure, strengths, and a list of urgent mitigation steps that should be taken immediately. The assessment should also include the likelihood of various emergencies or situations, and areas where the transit agencies may require assistance to prepare for either.

The primary deliverable will be an EMPT for TAs that identifies potential emergency situations and appropriate responses. The plan will include transit agency specific strategies to ensure continued service during and after an emergency, including, but not limited to a pandemic, severe weather (wind, snow, smoke, rain), fire, flooding, earthquake, outbreak of a contagious pathogen, and hazardous spills (including review of transit agency's Hazard Mitigation Plan), and responses for local, regional, or statewide project collaboration/implementation.

3. Scope of Work and Deliverables

3.1 Project Management and Collaboration

Selected vendor will:

1. Propose and produce a detailed scope of work, including how the consultant would accomplish the project goal and project timeline.
2. Work with MDOT OPT to review and finalize the scope and form of the EMPT for TAs.
3. Provide a planned approach for MDOT OPT involvement during the project, as well as recommended actions for MDOT OPT to take in support of the resulting EMPT.

3.2 EMPT Development

3.2a EMPT Development: Emergency Management Baseline Assessment of Michigan Public Transit Agencies

Selected vendor will:

1. Assess the common content of current transit emergency management plans and their effectiveness for addressing common emergency situations.
2. Assess common emergency response supplies/resources and assess their effectiveness for addressing common emergency situations.
3. Produce technical memorandum outlining findings.

3.2b EMPT Development: Emergency Management Situations

Selected vendor will research current and foreseeable future emergency situations to:

1. Identify emergency situations.
2. Review and analyze how future emergency situations will impact, change, or expand the way transit service is provided by transit operators.
3. Identify resources/supplies that could enhance an agency's ability to appropriately respond to emergency situations.
4. Produce technical memorandum outlining current and foreseeable future emergency situations and emergency response findings. The technical memorandum outlining the findings will be used as an input

to help develop the vision, goals, and objectives and a draft and final EMPT.

3.2c EMPT Development: Industry Peer Review

Selected vendor will:

1. Research and review other comparable rural public transit systems (i.e., peer review) nationwide to determine current emergency management plans.
2. Identify the emergency management plan use by organization size and identify any plans used by transit systems that appear to be an integral part of their business success.
3. Research how other states are approaching, prioritizing, and investing in public transit system emergency management.
4. Produce an emergency management technical memorandum summarizing the findings. Technical memorandum will be used in development of a draft and final EMPT.

3.2d EMPT Development: Emergency Management Standards

Based on research and assessments, selected vendor will:

1. Identify standard elements that should be included in emergency management plans.
2. Identify other elements such as key staff assignments/duties, roles and responsibilities, necessary training and drills, evacuation plans, etc., that should be included in emergency management plans.
3. Identify resources/supplies that should be kept on hand or in vehicles to adequately address/respond to emergency situations.
4. Produce a technical memorandum summarizing recommended emergency management standards and resources. Technical memorandum will be used in development of a draft and final EMPT.

3.3 Draft EMPT for Michigan Rural Public Transit Agencies

Selected vendor will:

1. Use technical memorandum findings and summaries to develop a draft EMPT.
2. Work with MDOT OPT to review, discuss, and modify a draft.

3.4 Final EMPT for Michigan Rural Public Transit Agencies

Selected vendor will:

1. Develop a final EMPT.

3.5 Training for use of EMPT

Selected Vendor will:

1. Develop and provide training materials to facilitate the use of the EMPT by transit agencies. All training materials must be approved by OPT.

3.6 Timeline

TBD 2021 to DECEMBER 2022

3.7 Submission

The following shall be provided as part of the proposal. With mutual agreement by both parties, project adherence regarding web conferencing, interim reports and supportive communications throughout the process must be met.

1. Comprehensive proposal including detailed explanation of how the vendor will accomplish the goals outlined in this RFP.
2. Virtual presentation to MDOT OPT covering the selected vendor's proposed approach to assessing, developing, and delivering the transit emergency management findings and recommendations.
3. Provide one electronic copy of the proposal.

The proposal, including Attachments A, B, C (if applicable) & D, must be submitted to Jeff Turner, Vehicle Procurement Analyst, MDOT OPT by the proposal due date of AUGUST 30, 2021 @ NOON (EST) LOCAL TIME. The respondent is solely responsible for the timely delivery of the proposal to Jeff Turner, Vehicle Procurement Analyst, MDOT OPT. Late proposals will not be considered.

Proposals shall be organized as follows:

1. Section 1: Cover Letter
2. Section 2: Signed Signature Page (Attachment A)
3. Section 3: Project Methodology and Approach: Including project team, organization, and proposal for meeting project objectives as described in the project overview, project goal, and scope of work and

deliverables sections. Expected timeline and milestones must be included.

4. Section 4: Qualifications, Related Experience and References: Including examples of and references for at least three similar projects.
5. Section 5: Price Proposal Form (Attachment B)
6. Section 6: Signed Federal Contract Clauses Professional and A&E More Than \$150,000 (Attachment D)

The proposal shall include descriptions and documents that correspond to the requirements in the project overview, project goal, and scope of work and deliverables sections and meet or exceed these requirements. MDOT OPT will be the final authority in determining the responsiveness of submittals, including whether all sections described above have been included. All materials submitted become the property of MDOT OPT. After selection, proposals shall be a matter of public record available for review, unless an exemption is requested and approved, in advance, for protection of trade secrets.

Each proposal should be a straightforward, concise description of the respondent's ability to meet the requirements and objectives of this RFP. Emphasis should be on completeness and clarity of content. MDOT OPT is not liable for any cost incurred by any party prior to signing of a contract with that party and then only upon written authorization from MDOT OPT to proceed with the project.

4. Procurement Process

4.1 Issuing Office

This Request for Proposal (RFP) is issued by MDOT OPT, P.O. Box 30050, Lansing, Michigan 48909. All communications regarding this project during the procurement process must be emailed to:

Jeff Turner, Vehicle Procurement Analyst
Michigan Department of Transportation
Office of Passenger Transportation
MDOT-OPT-RFP@michigan.gov

4.2 Project Oversight

The oversight of this project is the responsibility of MDOT OPT. The selected vendor will be required to work with the MDOT OPT and other agencies as directed by the MDOT OPT throughout the duration of the contract and attend progress meetings as required by Jeff Turner, Vehicle Procurement Analyst, MDOT OPT.

4.3 Proposal Requirements

To be considered for award, each respondent must submit a complete response to the RFP, using the designated format and accepting all federal and state requirements. Proposals are to be submitted only to MDOT-OPT-RFP@michigan.gov. No other distribution of proposals is to be made.

An official authorized to bind the respondent to the proposal must complete and sign the Signature Page of the proposal. It is to this person and to this email address that notices and other matters regarding this RFP will be provided. Submission of a proposal shall bind the respondent to all provisions of the proposal, including costs, for a period extending not less than 90 days following the proposal due date, which is stated on page one of the RFP.

4.4 Price Proposal Form

Submit the Price Proposal Form which is included in this RFP.

1. An itemized, detailed cost breakdown must be attached to the Price Proposal Form. The cost breakdown must include labor costs and time by staff, as well as overhead, travel, and other costs for completing the work outlined in this RFP. The Price Proposal Form shall be clearly labeled and must be included as a separate attachment.
2. Price proposals submitted on any other form than the Price Proposal Form may be considered non-responsive. Respondent shall not alter or qualify the Price Proposal Form unless authorized by the MDOT OPT steering committee in writing.
3. MDOT OPT is exempt from Federal Excise Tax and State sales tax and taxes shall not be included in the price proposal.
4. All travel costs billed will follow the State of Michigan's vehicle and travel rates. Current travel rates can be found on the Department of Technology, Management and Budget's website.

4.5 Primary Vendor Responsibilities

The selected vendor will be required to assume responsibility for all products and services offered in its proposal, whether, or not, the vendor performs them. Further, MDOT OPT will consider the selected vendor to be the sole point of contact regarding contractual matters, including payment of any, and all, charges resulting from the contract.

If any part of the work is to be subcontracted, the prime contractor must provide a complete description of work subcontracted and descriptive information about the subcontractor's organization and capabilities. The prime contractor is totally

responsible for subcontractor adherence to all provisions of the contract. All subcontractors must be identified in the proposal and are subject to MDOT OPT review and written approval prior to their participation in the project. The selected consultant firm may need to have a third-party subcontract approved by the MDOT OPT.

The selected vendor may be asked to provide additional goods or services that have not been outlined in this RFP. When additional goods or services beyond those outlined in this RFP and in the selected vendor's proposal are identified, MDOT OPT, and the selected vendor will discuss the selected vendor's ability to complete this work. If MDOT OPT determines the selected vendor should provide such additional goods or services, the selected vendor will provide a Request for a Task Order describing the goods or work to be done and all associated costs and prices. A written task order will then be issued by MDOT OPT.

4.6 Schedule of Activities

Activity	Date
RFP Released	Friday, AUGUST 12, 2021
Written Questions to MDOT OPT Due	Friday, AUGUST 27, 2021
MDOT OPT Question Responses Released	Monday, SEPTEMBER 13, 2021
Proposals Due	Monday, SEPTEMBER 27, 2021 Noon, EDT
Anticipated Award Date	Friday, OCTOBER 22, 2021
Anticipated Project Start Date	TBD, 2021

4.7 Contract Term

The term of the proposed contract will commence once both parties have signed the agreed upon legal document(s). MDOT OPT reserves the right to extend the term of the contract resulting from this RFP if additional support is deemed to be required beyond the pilot period. Any extension will be in writing and may include additional funding. The selected vendor's obligations concerning indemnity and any, and all, warranties shall remain in effect after termination of the contract.

4.8 Pre-proposal Assistance

MDOT OPT will provide the same information to all interested parties to ensure fairness and impartiality in the procurement process. To that end, MDOT OPT will not respond to telephone inquiries or personal visits. Submit questions via email to MDOT OPT no later than 5 p.m. EDT Friday, AUGUST 27, 2021.

Jeff Turner, Vehicle Procurement Analyst
Michigan Department of Transportation
Office of Passenger Transportation
MDOT-OPT-RFP@michigan.gov

4.9 Modifications

Modifications made to this RFP, in response to questions or concerns raised through RFP correspondence received from respondents, or due to internal discovery, will be posted on the MDOT OPT website on SEPTEMBER 13, 2021 at: [MDOT - Contracting Opportunities for Transit Projects \(michigan.gov\)](https://www.michigan.gov/MDOT-Contracting-Opportunities-for-Transit-Projects). It is the respondent's responsibility to view the MDOT OPT website on this date and address changes accordingly, if posted.

4.10 Submission

Jeff Turner, Vehicle Procurement Analyst
Michigan Department of Transportation
Office of Passenger Transportation
MDOT-OPT-RFP@michigan.gov

Proposals must be emailed to MDOT OPT and received by Monday, SEPTEMBER 27, 2021 at Noon (EDT) local time. No hand delivery will be accepted. Late proposals will not be considered. MDOT OPT will email a confirmation upon receipt of a submitted proposal.

All proposals submitted in response to this RFP will become the property of MDOT OPT and will not be returned to the respondent. Proposals may be withdrawn via email at any time prior to the due date and time. No proposal may be withdrawn after the due date unless there is a material error in the proposal. Withdrawn proposals may be resubmitted, with or without modifications, up to the due date and time. MDOT OPT shall require proof of agency from the person withdrawing a proposal.

4.11 Acceptance of Proposal Content

The contents of this RFP, its attachments, and the proposal will become contractual obligations if a contract ensues. Failure of the successful respondent to accept these obligations may result in elimination of the respondent from the selection process. MDOT OPT reserves the right to waive any minor informalities or irregularities.

4.12 Evaluation Procedures and Criteria

The proposal review committee members are the steering committee composed of MDOT OPT and rural transit agency staff members. Review committee members may be assisted by non-scoring technical advisors as needed. All proposals will be scored by the evaluation committee according to the evaluation criteria.

5. Evaluation Criteria

The evaluation criteria are equally weighted and listed below.

1. **Qualifications, Related Experience, and References:** The qualifications of the respondent will be evaluated in terms of relevant experience in performing work of a similar nature, experience with a minimum of three projects, strength and stability of the firm, capacity to perform the required services, and assessment by client references.
2. **Proposed Project Team and Organization:** The organizational structure of the respondent will be evaluated in terms of its effective use of personnel, relevant experience, and time commitment of key personnel, especially their designated project manager and sub-consultants (if applicable), logic of project organization, adequacy of labor commitment and resources, and capability to reallocate resources as needed to meet project schedules.
3. **Methodology and Approach:** The narrative of the respondent's methodology and approach will be evaluated to determine the respondent's understanding of project scope and ability to execute and complete this project.
4. **Project Schedule and Deliverables:** The project schedule with key deliverables will be evaluated to determine the respondent's understanding of project scope, work schedule, logic, clarity, specificity, and overall quality.
5. **Price:** Price will be evaluated using the following formula: lowest proposal price divided by the proposal price being evaluated times available points.

Proposals must remain valid for a period of 90 days after the proposal due date.

5.1 Award

MDOT OPT will award the contract to the most responsive, responsible respondent having proven experience as described herein. MDOT OPT reserves the right to award this contract not necessarily to the proposal with the lowest price but to the proposal that receives the highest cumulative score of the equally weighted five criteria. Award will only be made to a responsive and responsible respondent.

A response to any RFP is an offer to contract with MDOT OPT based upon the terms, conditions, and specifications contained in the RFP. Proposals do not become contracts unless and until MDOT OPT executes them.

5.2 Payment and Contract Type

This solicitation will result in a firm, fixed price contract (does not include market driven variable costs). Invoices are to be submitted electronically according to the instructions from the MDOT OPT project manager. MDOT OPT and the selected vendor will develop a series of progress payments based upon the schedules of deliverables in Section 3.1(1). All invoices must include the progress payment number. Failure to comply may result in delayed payments. Payments will be made upon receipt of a complete invoice and MDOT OPT review and approval of the scheduled deliverables.

5.3 Compliance with Laws and Regulations

The selected vendor shall render the services required by this RFP in complete compliance with all applicable federal, State, and local laws, ordinances, rules, and regulations. It shall be the responsibility of the selected vendor to be familiar and comply with said regulations and policies. The selected vendor shall also provide MDOT OPT with satisfactory evidence of their ability to obtain any required insurance and bonds from a company licensed by the Insurance Commissioner of the State of Michigan to transact surety business in the State of Michigan.

5.4 Independent Price Determination

By submission of a proposal, the respondent certifies that in connection with this proposal:

1. The prices in the proposal have been determined independently and without consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such prices with any other respondent or with any competitor.
2. Unless otherwise required by law, the prices that have been quoted in the proposal have not been knowingly disclosed by the respondent prior to award directly or indirectly to any other respondent or to any competitor.
3. No attempt has been made or will be made by the respondent to induce any other persons or firm to submit or not submit a proposal for the purpose of restricting competition.

The person signing the Price Proposal Form certifies that she/he is the person in the respondent's organization responsible within that organization for the decision as to the prices being offered in the proposal and has not participated (and will not participate) in any action contrary to the requirements indicated in the bullets above.

5.5 Reservation of Rights

MDOT OPT reserves its rights to cancel, amend, or reissue this RFP or the project at any time and may cancel any award pursuant to this RFP or seek amended or new proposals for a sound, documentable, business reason.

MDOT OPT further reserves the right to:

1. Reject all proposals and re-solicit or cancel the RFP for sound, documentable business reasons.
2. Enter a contract with any respondent, based upon the initial proposal, or based on a Best and Final offer, with or without conducting written or oral discussions.
3. Award a contract to a respondent other than the respondent that submitted the lowest price proposal.

The selected vendor agrees to indemnify and hold MDOT OPT, its officers, agents, employees and/or trustees, harmless from and against any and all claims or causes of action brought against them and from any and all damages, losses, expenses, attorney fees, costs and liabilities sustained by arising out of any claimed defect in the goods and services provided by the selected vendor. The selected vendor's obligation under this paragraph shall include the obligation to indemnify and hold MDOT OPT harmless for negligence, whether active, passive, or concurrent, in the performance of the agency's duties and obligations pursuant to this project and agreement.

Attachment A: Signature Page

Company: _____ Name: _____

Address: _____

Telephone Number: _____

Fax Number: _____

Email Address: _____

Federal Tax ID Number: _____

Check ONE of the following:

☐ Partnership

☐ Non-Profit Corporation

☐ Profit Corporation

Check ONE of the following. If you have a DBE status, submit current certificate with proposal:

☐ DBE

☐ Non-DBE

☐ Other (specify)

I certify, under penalty of perjury, that I have the legal authorization to bind the firm hereunder.

Signature of Authorized Signatory: _____

Title of Authorized Signatory: _____

Name of Authorized Signatory (print): _____

Date: _____

The above individual is authorized to sign on behalf of the company submitting this proposal. Proposals must be signed by an official authorized to bind the provider to its provisions for a period of at least 90 days.

Attachment B: Price Proposal Form

Company: _____

Name of Authorized Representative: _____

Title: _____

Address: _____

Telephone Number: _____

Fax Number: _____

Email Address: _____

Signature of Authorized Representative:

Date: _____

Lump Sum Price* for completion of project as specified in RFP:

\$ _____

Lump sum price includes all services, labor, expenses, travel, overhead, material production and other costs to complete the project. Respondent **must attach a detailed and itemized cost breakdown.*

Option A la Carte pricing for urban agencies and Section 5310 and Specialized Services subrecipients:

Attachment C: Bid Protest Procedures

All protests lodged by potential or actual bidders, contractors, vendors, or proposers must be made in writing and contain the following information:

1. Name, address, and telephone number of the protester.
2. Identification of the solicitation or contract number and title.
3. A detailed statement of the protest's legal and factual grounds, including copies of relevant documents.
4. Identification of the issue(s) to be resolved and statement of what relief is requested.
5. Argument and authorities in support of the protest.
6. A statement that copies of the protest have been mailed or delivered to all interested parties in the Invitation for Bid or Request for Proposal process. In the case of Requests for Proposals, MDOT OPT shall direct the protester to mail or deliver the protest to relevant parties.

The protest should be emailed to:

Jeff Turner, Vehicle Procurement Analyst
Michigan Department of Transportation
Office of Passenger Transportation
MDOT-OPT-RFP@michigan.gov

Faxed protests will not be accepted.

Jeff Turner, Vehicle Procurement Analyst, MDOT OPT will respond, in detail, with a response to each substantive issue raised in the protest. MDOT OPT will also perform the following analysis:

1. Price Analysis or Cost Analysis for each claim.
2. Technical Analysis to determine the validity of the claim(s) and determine the appropriate response(s).
3. Legal Analysis to consider all the factors available after the price, cost and technical analyses have been conducted to determine the contractor's, MDOT OPT and FTA's legal positions.

MDOT OPT has the authority to render the final determination regarding the protest. Any determination rendered by MDOT OPT will be final. The Federal Transit Administration will entertain appeals only in cases stated below:

1. If the protester has exhausted all administrative remedies with MDOT OPT, and
2. If MDOT OPT has failed to follow its protest procedures or failed to review a complaint or protest.

The protester's appeal must be received by the FTA Region V Office within five (5) working days of the date the protester knew or should have known of the violation and submitted at the following:

Office of Operations and Program Management
U.S. Department of Transportation
Federal Transit Administration Region V
200 West Adams Street, Suite 320
Chicago, Illinois 60606
Phone: (312) 353-2789

Pre-Bid or Solicitation Phase Protest

A Pre-Bid or Solicitation Phase Protest must be received in writing by MDOT OPT a minimum of five (5) full working days prior to the bid opening or proposal due date. If the written protest is not received in the time specified, the award may be made following normal procedures, unless MDOT OPT, upon investigation, determines that remedial action is required on the grounds of fraud, gross abuse of the procurement process, or otherwise indicates substantial prejudice to the integrity of the procurement system, and said action should be taken. Within three (3) working days from the time the protest is received, MDOT OPT will notify all potential bidders, contractors, or proposers that a protest has been lodged and the nature of the protest. MDOT OPT will respond to the protest in writing within five (5) working days from the time the protest was received. If MDOT OPT decides to withhold the award pending the resolution of the protest, MDOT OPT may request a time extension for award acceptance from those bidders, contractors, or proposers whose bids or proposal might become eligible for award. This extension for award acceptance must be with the consent of sureties, if any, to avoid the need for re-advertising.

MDOT OPT will not make an award prior to five (5) working days after the protest is resolved, or if the protest has been filed with FTA during the protest negotiation period, unless MDOT OPT determines that:

1. The items or services to be procured are urgently required, or
2. Delivery or performance will be unduly delayed by failure to make the award promptly, or
3. Failure to make the award will otherwise cause undue harm to MDOT OPT or the federal government.

MDOT OPT will document this action and give written notice of the decision to proceed with the award to the protester, and to other parties when deemed necessary.

Pre-Award Protest

Protests may be lodged after the Close of Request for Proposal deadline and prior to Notice of Award. Within three (3) working days from the time the protest is received, MDOT OPT will notify all potential bidders, contractors, or proposers that a protest has been lodged and the nature of the protest. MDOT OPT will respond to the protest in writing within five (5) working days from the time the protest was received. If MDOT OPT decides to withhold the award pending the resolution of the protest, MDOT OPT may request a time extension for award acceptance from those bidders, contractors, or proposers whose bids or proposal might become eligible for award. This extension for award acceptance must be with the consent of sureties, if any, to avoid the need to re-advertise.

MDOT OPT will not make an award prior to five (5) working days after the protest is resolved, or if the protest has been filed with FTA during the protest negotiation process, unless MDOT OPT determines that:

1. The items or services to be procured are urgently required, or
2. Delivery or performance will be unduly delayed by failure to make the award promptly, or
3. Failure to make the award will otherwise cause undue harm to MDOT OPT or the federal Government.

MDOT OPT will document this action and give written notice of the decision to proceed with the award to the protester, and to other parties, where deemed necessary.

Post-Award Protest

MDOT OPT must receive protests in writing within three (3) working days after the Notice of Award and letters of notification should have been received by bidders or proposers. Upon receipt of a protest, MDOT OPT shall notify the bidder or proposer awarded the contract. MDOT OPT will render a determination to proceed with the contract or suspend the project until the protest is resolved. MDOT OPT will respond to the protest in writing within five (5) working days after receipt of the protest.

**PROFESSIONAL AND
A & E MORE THAN \$150,000****LOBBYING**

Applicability – construction/architectural and engineering/acquisition of rolling stock/professional service contract/operational service contract/turnkey contracts over \$150,000.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104- 65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$150,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

CONTRACTOR / COMPANY NAME

NAME, TITLE AND SIGNATURE OF CONTRACTOR'S AUTHORIZED OFFICIAL:

TYPE OR PRINT NAME	TITLE
SIGNATURE	DATE

GOVERNMENT WIDE DEBARMENT AND SUSPENSION (NON PROCUREMENT)

Applicability – all contracts more than \$25,000.

The Recipient agrees to the following:

1. It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," <http://www.sam.gov.proxy1.semalt.design> if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <http://www.sam.gov.proxy1.semalt.design> if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200.
2. If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel.

CONTRACTOR / COMPANY NAME

NAME, TITLE AND SIGNATURE OF CONTRACTOR'S AUTHORIZED OFFICIAL:

TYPE OR PRINT NAME	TITLE	
SIGNATURE	DATE	

SEISMIC SAFETY

Construction of new buildings or additions to existing buildings. These requirements do not apply to micropurchases (\$10,000 or less, except for construction contracts of more than \$2,000).

Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in USDOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under this contract, including work performed by subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

PATENT AND RIGHTS IN DATA

Applicability – all contracts involving experimental, developmental, or research work except micropurchases (\$10,000 or less, except for construction contracts over \$2,000).

Patent Rights:

- A. General. The Recipient agrees that: (1) Depending on the nature of the Project, the Federal Government may acquire patent rights when the Recipient or Third Party Participant produces a patented or patentable: (a) Invention, (b) Improvement, or (c) Discovery, (2) The Federal Government's rights arise when the patent or patentable information is: (a) Conceived under the Project, or (b) Reduced to practice under the Project, and (3) When a patent is issued or patented information becomes available as described in Patent Rights section A(2), the Recipient agrees to: (a) Notify FTA immediately, and (b) Provide a detailed report satisfactory to FTA,
- B. Federal Rights. The Recipient agrees that: (1) Its rights and responsibilities, and the rights and responsibilities of each Third Party Participant, in that federally funded invention, improvement, or discovery will be determined as provided by applicable Federal laws, regulations, and guidance, including any waiver thereof, and (2) Unless the Federal Government determines otherwise in writing, irrespective of the Recipient's status or the status of any Third Party Participant as a large business, a small business, a State government, a State instrumentality, a local government, an Indian tribe, a nonprofit organization, an institution of higher education, or an individual, the Recipient agrees to transmit the Federal Government's patent rights to FTA as specified in: (a) 35 U.S.C. § 200 et seq., and (b) U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. part 401, and C. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19: (1) License fees and royalties for patents, patent applications, and inventions derived from the Project are program income, and (2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except: (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research-type project, and (b) As FTA determines otherwise in writing.

Rights in Data and Copyrights:

- A. Definition of "Subject Data." means recorded information: (1) Copyright. Whether or not copyrighted, and (2) Delivery. That is delivered or specified to be delivered under the Underlying Agreement,

- B. Examples of "Subject Data." Examples of "subject data": (1) Include, but are not limited to: (a) Computer software, (b) Standards, (c) Specifications, (d) Engineering drawings and associated lists, (e) Process sheets, (f) Manuals, (g) Technical reports, (h) Catalog item identifications, and (i) Related information, but (2) Do not include: (a) Financial reports, (b) Cost analyses, or (c) Other similar information used for Project administration,
- C. General Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of the Recipient's Project supported by the Underlying Agreement: (1) Prohibitions. The Recipient may not: (a) Publish or reproduce any subject data in whole or in part, or in any manner or form, or (b) permit others to do so, but (2) Exceptions. The prohibitions of Rights in Data and Copyrights C(1) do not apply to: (a) Publications or reproductions for the Recipient's own internal use, (b) An institution of higher learning, (c) The portion of subject data that the Federal Government has previously released or approved for release to the public, or (d) The portion of data that has the Federal Government's prior written consent for release,
- D. Federal Rights in Data and Copyrights. The Recipient agrees that: (1) License Rights. The Recipient must provide a license to its "subject data" to the Federal Government, which license is: (a) Royalty-free, (b) Nonexclusive, and (c) Irrevocable, (2) Uses. The Federal Government's license must permit the Federal Government to take the following actions provided those actions are taken for Federal Government purposes: (a) Reproduce the subject data, (b) Publish the subject data, (c) Otherwise use the subject data, and (d) Permit other entities or individuals to use the subject data, and
- E. Special Federal Rights in Data for Research, Development, Demonstration, Deployment, and Special Studies Projects. In general, FTA's purpose in providing Federal funds for a research, development, demonstration, deployment, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to the Recipient and its Third Party Participants, therefore, the Recipient agrees that: (1) Publicly Available Report. When the Project is completed, it must provide a Project report that FTA may publish or make available for publication on the Internet, (2) Other Reports. It must provide other reports pertaining to the Project that FTA may request, (3) Availability of Subject Data. FTA may make available to any FTA Recipient or any of its Third Party Participants at any tier of the Project, either FTA's copyright license to the subject data or a copy of the subject data, except as the Federal Government determines otherwise in writing, (4) Identification of Information. It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA, (5) Incomplete Project. If the Project is not completed for any reason whatsoever, all data developed under the Project becomes "subject data" and must be delivered as the Federal Government may direct, but (6) Exception. Rights in Data and Copyrights Section E does not apply to an adaptation of automatic data processing equipment or program that is both: (a) For the Recipient's use, and (b) Acquired with FTA capital program funding, F. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19: (1) License fees and royalties for copyrighted material or trademarks derived from Project are program income, and (2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except: (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research-type project, and (b) As FTA determines otherwise in writing,
- F. Hold Harmless. Upon request by the Federal Government, the Recipient agrees that: (1) Violation by Recipient. (a) If it willfully or intentionally violates any: 1 Proprietary rights, 2 Copyrights, or 3 Right of privacy, and (b) Its violation occurs from any of the following uses of Project data: 1 Publication, 2 Translation, 3 Reproduction, 4 Delivery, 5 Use, or 6 Disposition, then (c) It will indemnify, save, and hold harmless against any liability, including costs and expenses of: 1 The Federal Government's officers acting within the scope of their official duties, 2 The Federal Government's employees acting within the scope of their official duties, and 3 Federal Government's agents acting within the scope of their official duties, but (2) Exceptions. The Recipient will not be required to indemnify the Federal Government for any liability described in Rights in Data and Copyrights section G(1) if: (a) Violation by Federal Officers, Employees or Agents. The violation is caused by the wrongful acts of Federal employees or agents, or (b) State law. If indemnification is prohibited or limited by applicable State law, H. Restrictions on Access to Patent Rights. Nothing in this Rights in Data and Copyrights section pertaining to rights in data either: (1) Implies a license to the Federal Government under any patent, or (2) May be construed

to affect the scope of any license or other right otherwise granted to the Federal Government under any patent, I. Data Developed Without Federal Funding or Support. The Recipient understands and agrees that in certain circumstances it may need to provide data developed without any Federal funding or support to FTA. Nevertheless: (1) Protections. Rights in Data and Copyrights Sections A, B, C, and D generally do not apply to data developed without Federal funding, even though that data may have been used in connection with the Project, and (2) Identification of Information. The Recipient understands and agrees that the Federal Government will not be able to protect data developed without Federal funding from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential," and

- G. Requirements to Release Data. The Recipient understands and agrees that the Federal Government may be required to release Project data and information the Recipient submits to the Federal Government as required by: (1) The Freedom of Information Act, 5 U.S.C. § 552, (2) Another applicable Federal law requiring access to Project records, (3) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," specifically 49 C.F.R. § 19.36(d), or (4) Other applicable Federal regulations and guidance pertaining to access to Project records.

BREACHES AND DISPUTE RESOLUTION

Applicability – all contracts more than \$150,000.

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient's authorized representative. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient's CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the the False Claims Act, 31 U.S.C. § 3729. Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved. Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage. Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the recipient and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State. Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the recipient or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

CLEAN AIR

Applicability – all contracts more than \$150,000.

1. Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.
2. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

CLEAN WATER

Applicability – all contracts and Subcontracts more than \$150,000. Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

FLY AMERICA REQUIREMENTS

Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

Contractor shall comply with 49 USC 40118 (the “Fly America” Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

ENERGY CONSERVATION

Applicability – all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

ACCESS TO RECORDS AND REPORTS

Applicability – as shown below. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$150,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor

which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)(1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11). FTA does not require the inclusion of these requirements in subcontracts.

FEDERAL CHANGES

Applicability – all Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability – all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

1. The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

Applicability – all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

1. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

2. If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.
3. Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

TERMINATION

Applicability – all contracts more than \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$150,000.

- a. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.
- b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.
- c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.
- d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that contractor

was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

- g. Termination for Default (Transportation Services) if contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.
- h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. the recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the recipient resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work. Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if: (1). Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and (2). Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses. If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.
- i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.
- j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice of termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for

from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract closeout costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS

Applicability – when a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

1. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
2. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

CIVIL RIGHTS REQUIREMENTS

Applicability – all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

The following requirements apply to the underlying contract: The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service: a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute):

- a. (1) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,
- b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National

- origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,
- c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer". (3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note,
- d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of MAP-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third party contracts exceeding \$250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 implement a DBE program approved by FTA, and 3 establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement.

Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq., (2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under MAP-21 and previous legislation,

- e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,
- f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,
- g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of "employer," (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37, (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27, (c) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35, (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36, (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194, and (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,
- h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42

U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2,

- i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following: 1) Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005,
- j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.
- k. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

DISADVANTAGED BUSINESS ENTERPRISE

Applicability – contracts over \$10,000 awarded on the basis of a bid or proposal offering to use DBEs:

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, and Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.
- b. The contractor shall not discriminate on the basis of race, color, religion, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.
- d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.
- f. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

PROMPT PAYMENT

Applicability – all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

Applicability – all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.